



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/688,688 | 10/17/2003 | Sergio A. Alonso | 03-5404 | 2633 |

7590 12/08/2005

Edward M. Livingston, P.A.
963 Trail Terrace Drive
Naples, FL 34103

| |
|----------|
| EXAMINER |
|----------|

LUONG, SHIAN TINH NHAN

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3728

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,688

Applicant(s)

ALONSO, SERGIO A.

Examiner

Shian T. Luong

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/17/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

1. Claim 9 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/11/05.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,7 are rejected under 35 U.S.C. 102(b) as being anticipated by D'Andrea (US 6,102,209). D'Andrea discloses a container comprising a bottom section 14 with at least one edge. The bottom section has at least one side 32 in connection with the base. The bottom section has an open portion opposite the base. A top section 18 having a top cover with at least one edge, the top section having at least one side 38 in connection with the cover, and the top section having an open portion opposite the cover. The bottom section is fitted within the cover section 18. The top cover edge and the bottom section base edge are circular.

4. Claims 2-3,5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D'Andrea. It appears that the top cover is slightly larger than the bottom section in order to receive the bottom section. It would have been obvious to modify the container size if the top cover is not larger to accommodate the bottom section.

Art Unit: 3728

5. Claims 1-2,4,6,14 are rejected under 35 U.S.C. 102(a) as being anticipated by Bowman (US 6,601,757). Bowman discloses a container comprising a bottom section 14,46 with at least one edge. The bottom section has at least one side in connection with the base. The bottom section has an open portion opposite the base. A top section 12,44 having a top cover with at least one edge, the top section having at least one side in connection with the cover, and the top section having an open portion opposite the cover. The bottom section is fitted within the cover section 18. The top and bottom covers perimeter are rectangular.

6. Claims 1-2,4,6,7,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Clerc (US 2,655,260). Clerc discloses a container comprising a bottom section 28,29 with at least one edge. The bottom section has at least one side in connection with the base. The bottom section has an open portion opposite the base. A top section 27 having a top cover with at least one edge, the top section having at least one side in connection with the cover, and the top section having an open portion opposite the cover. The bottom section is fitted within the cover section 27. The top cover and the bottom cover perimeter are square and both portions are transparent.

7. Claims 1-2,4,6,8,13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Official Notice. Official Notice is taken of a conventional musical box with a top cover and a bottom section. The top cover is usually larger in size with top cover sidewalls than the bottom section with the bottom section sidewall. A musical winder is usually attached to the bottom section and the musical winder is connected to an internally located musical box. The containers are usually square or circular or square.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3,5,12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman. Although Bowman does not disclose a circular, triangular or square bottom or top covers with side portions, it does disclose that the invention may be in any form capable of acting as a container. This includes shapes such as elliptical, hexagonal, round, polyhedral, etc. Hence, it would have been obvious to provide the container in any variety of shapes and sizes as conventionally known in the art.

10. Claims 7,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of Klein et al. (US 4,524,867) and/or Clerc (US 2,655,260). Bowman discloses providing transparent panels for the lid. However, it does not disclose whether the bottom section is transparent. However, Klein et al. and Clerc both teach the use of transparent top and bottom covers for a container to allow viewing of the contents. It would have been obvious in view of Klein et al. and/or Clerc to provide transparent portions for the container of Bowman.

It would also have been obvious in view of Klein et al. to provide labels within the container as part of the promotional/gift container.

11. Claims 3,5,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Official Notice. Although Official Notice does not disclose a circular or triangular bottom or top covers

Art Unit: 3728

with side portions, it would have been obvious to provide the container in any variety of shapes and sizes as conventionally known in the art.

12. Claims 3,5,12,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clerc. Although Clerc does not disclose a circular, square or triangular bottom or top covers with side portions, it would have been obvious to provide the container in any variety of shapes and sizes as conventionally known in the art.

Conclusion

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is 571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.


Application/Control Number: 10/688,688

Page 6

Art Unit: 3728

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
December 5, 2005



Primary Examiner
Shian Luong
Art Unit 3728